U.S. Department of Justice

Immigration and Naturalization Service

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*OFFICE OF ADMINISTRATIVE APPEALS*
*425 Eye Street N.W.*
*ULLB, 3rd Floor*
*Washington, D.C. 20536*

[redacted]

FEB 09 2000

FILE: [redacted] Office: Texas Service Center Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under § 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(A)(iii)

Public Copy

IN BEHALF OF APPLICANT: Self-represented

Identifying ... prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

For Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

**DISCUSSION:** The application was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was lawfully admitted for permanent residence on March 3, 1993. On December 19, 1996, he was convicted of a violation of a law relating to a controlled substance (an unspecified amount of marijuana) and was sentenced to five years incarceration. Therefore, he is inadmissible under § 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(II). On May 16, 1997, the applicant was ordered removed from the United States for having been convicted of an aggravated felony. He was removed to Mexico on May 7, 1998. Therefore, he is inadmissible under § 212(a)(9)(A)(ii) of the Act, 8 U.S.C. 1182(a)(9)(A)(ii). The applicant seeks permission to reapply for admission under § 212(a)(9)(A)(iii), 8 U.S.C. 1182(a)(9)(A)(iii), to rejoin his family in the United States.

Citing Matter of J-F-D-, 10 I&N Dec. 694 (Reg. Comm. 1963), and Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964), the director determined that the applicant is mandatorily inadmissible to the United States for having been convicted of violating a law relating to a controlled substance, and no waiver is available for such a conviction. The director then denied the application accordingly.

On appeal, the applicant's wife expresses the difficulties she and the children are experiencing and how they dream of having the applicant present with them again.

Section 212(a)(9) of the Act, ALIENS PREVIOUSLY REMOVED, provides, in pertinent part, that:

> (A) CERTAIN ALIENS PREVIOUSLY REMOVED.-
>
> (ii) OTHER ALIENS.-Any alien not described in clause (i) who-
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> (I) has been ordered removed under § 240 [1229a] or any other provision of law, or
>
> (II) departed the United States while an order of removal was outstanding,
>
> and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
>
> (iii) EXCEPTION.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from

foreign continuous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in § 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) WAIVER OF SUBSECTION (a)(2)(A)(i)(I), (II), (B), (D), AND (E).-The Attorney General may, in his discretion, waive application of subparagraph (A)(i)(II) of subsection (a)(2) insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-....

Matter of Grijalva, 19 I&N 713 (BIA 1988), held that where the amount of marijuana an alien has been convicted of possessing cannot be ascertained from the alien's conviction record, the alien must come forward with credible testimony or other evidence to meet his burden of proving that his conviction related to 30 grams or less of marijuana. While a waiver of grounds of inadmissibility under this section is available to an alien convicted of a single offense of simple possession of 30 grams or less of marijuana, the record does not show the amount of marijuana in the applicant's possession at the time of his arrest. However, his sentence to 5 years in prison suggests an amount of marijuana that exceeds 30 grams.

Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964), held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien convicted of violating a law relating to illicit trafficking, since he is mandatorily inadmissible to the United States under present §§ 212(a)(2)(A)(i)(II) or 212(a)(2)(C) of the Act, and no purpose would be served in granting the application.

The record reflects that the applicant is inadmissible to the United States under § 212(a)(2)(A)(i)(II) of the Act. No waiver of such ground of inadmissibility is available, except for a single offense of simple possession of 30 grams or less of marijuana. Therefore, the favorable exercise of discretion in this matter is not warranted.

[redacted]

In discretionary matters, the applicant bears the full burden of proof. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957); Matter of Ducret, 15 I&N Dec. 620 (BIA 1976). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.